

Internal Revenue Service

Department of the Treasury
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Telephone Number:

Refer Reply To:

CC:CORP:B05

PLR-134348-10

Date:

December 17, 2010

LEGEND:

Parent =

Corp X =

Corp Y =

Corp Z =

Business1 =

Business2 =

Country =

State A =

State B =

a =

b =

c =

d =

e =

f =

g =

h =

Dear :

The rulings contained in this letter are based upon information and representations submitted in a request dated August 20, 2010, and additional materials dated October 20, November 4, and December 2 and 15, 2010, by the taxpayer and accompanied by penalties of perjury statements executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

FACTS

Parent is a foreign corporation formed in Country. Parent's stock is publicly traded in Country. Parent computes its taxable income on the basis of the calendar year and under an accrual method of accounting. Parent wholly owns Corp X, a domestic corporation formed in State A. Corp X is the common parent of an affiliated group of corporations that files a consolidated federal income tax return. Corp X computes its taxable income on the basis of the calendar year and under an accrual method of accounting.

Corp Y is a public corporation that was formed in State A. Corp Y is the common parent of an affiliated group of corporations that files a consolidated federal income tax return. Corp Y computes its taxable income on the basis of the calendar year and under an accrual method of accounting.

Corp X is in Business1. Corp Y is in Business2. Parent proposes integrating the operations of Corp X and Corp Y to expand its domestic operations.

PROPOSED TRANSACTIONS

Prior to the Merger (described below), Corp Y will form Corp Z, a newly formed wholly owned, State B corporation. Corp Y will transfer all of its assets and liabilities to Corp Z and Corp Y will cease to exist (the Reincorporation). Pursuant to the Reincorporation, all of the outstanding Corp Y options will convert into Corp Z options with identical rights, and the capital structure of Corp Y will remain unchanged.

Thereafter, Parent's wholly owned subsidiary, Corp X, will merge into Corp Z with the Corp Z shareholders exchanging their Corp Z stock for cash and nonvoting stock in Parent. The following is proposed:

(1) Parent will contribute newly issued nonvoting stock to Corp X to use as consideration in the Merger.

(2) Corp X will borrow \$a, offer its bonds to the public for \$b, refinance \$c of its existing debt, and use \$d as consideration in the Merger.

(3) Corp X will transfer all of its assets and liabilities to Corp Z, which includes nonvoting stock in Parent and \$d, in exchange for Corp Z stock, and Corp X will cease to exist (the Merger).

(4) Corp Z will use \$e received in the Merger to refinance its debt.

(5) Corp Z shareholders will exchange their Corp Z stock for \$f and nonvoting stock in Parent that will represent g% cash and h% nonvoting stock in Parent.

The nonvoting stock in Parent will be traded in the form of American Depositary Shares on a regulated exchange in the United States.

REPRESENTATIONS

Taxpayer has made the following representations in connection with the Reincorporation and the Merger.

The Reincorporation

(a) Immediately prior to the Reincorporation, Corp Z will be engaged in no business activity, will have no tax attributes (including those specified in section 381(c)), and will hold no assets (except for nominal assets necessary to pay incidental expenses or maintain Corp Z's status as a corporation under State B law).

(b) The fair market value of the Corp Z stock and other consideration received by each Corp Y shareholder will be approximately equal to the fair market value of the Corp Y stock surrendered in the Reincorporation.

(c) Immediately following the Reincorporation, the shareholders of Corp Y will own all of the outstanding Corp Z stock and will own such stock solely by reason of their ownership of Corp Y stock immediately prior to the Reincorporation.

(d) There will be no change in the ownership of Corp Z in the Reincorporation, except a change that has no effect other than that of a redemption of less than all of the shares of the corporation.

(e) Corp Z has no plan or intention to issue additional shares of its stock following the Reincorporation.

(f) Immediately following consummation of the Reincorporation, Corp Z will possess the same assets and liabilities, as those possessed by Corp Y immediately prior to the Reincorporation.

(g) At the time of the Reincorporation, Corp Y will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Corp Y.

(h) Corp Z has no plan or intention to sell or otherwise dispose of any of the assets of Corp Y acquired in the Reincorporation, except for dispositions made in the ordinary course of business.

(i) The liabilities of Corp Y assumed by Corp Z (within the meaning of section 357(d)) plus the liabilities, if any, to which the transferred assets are subject, were incurred by Corp Y in the ordinary course of its business and are associated with the assets transferred.

(j) The shareholders, Corp X, and Corp Z will pay their respective expenses, if any, incurred in connection with the Reincorporation.

(k) Corp Y is not under the jurisdiction of a court in a title 11 or similar case within the meaning of section 368(a)(3)(a) of the Code.

The Merger

(l) The fair market value of the Corp Z stock and other consideration that Corp X will exchange with Parent will be approximately equal to the fair market value of the Corp X stock surrendered in the Merger.

(m) At least 40 percent of the proprietary interest in Corp X will be exchanged for Corp Z stock and will be preserved within the meaning of Treas. Reg. § 1.368-1(e).

(n) There is no plan or intention by Corp Z or any person related to Corp Z (as defined in Treas. Reg. § 1.368-1(e)(3)) to acquire or redeem any Corp Z stock that was furnished in the Merger, either directly or through any transaction, agreement or other arrangement with any other person.

(o) Corp Z has no plan or intention to sell or otherwise dispose of any of Corp X's assets acquired in the transaction, except for dispositions made in the ordinary course of business or transfers described in section 368(a)(2)(C) of the Code.

(p) The liabilities of Corp X assumed by Corp Z and the liabilities to which the transferred assets of Corp X are subject were incurred by Corp X in the ordinary course of its business, other than the cash from the borrowings used by Corp X as consideration in the Merger.

(q) Following the Merger, Corp Z will continue the historic business of Corp X.

(r) Corp Z, Corp X, and Parent will each pay their own expenses, if any, incurred in connection with the transaction.

(s) There is no intercorporate indebtedness existing between Corp X and Corp Z that was issued, acquired, or will be settled at discount.

(t) No two parties to the transaction are investment companies as defined in sections 368(a)(2)(F)(iii) and (iv) of the Code.

(u) Corp X is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A) of the Code.

(v) The total fair market value of the assets that Corp X will transfer to Corp Z will exceed the sum of the amount of any liabilities assumed (within the meaning of section 357(d)) by Corp Z in the Merger. The fair market value of the assets of Corp Z will exceed the amount of its liabilities immediately after the Merger.

(w) No section 338 election will be made by Corp X, Corp Z, or any subsidiary (of either Corp X or Corp Z) that might be eligible to make such an election.

(x) Neither Corp X nor Corp Z (as successor to Corp Y) has net operating loss carryovers and none are expected in the year of the Merger.

(y) Neither Corp X nor Corp Z is a loss corporation within the meaning of section 382(k)(1) of the Code on the date of the Merger.

(z) To the extent that Corp Z incurs a net operating loss in any taxable year following the Merger, Corp Z's ability to carryback such net operating losses to a taxable year prior to the Merger would be limited by sections 382 and 383 of the Code and would be subject to the rules regarding separate return limitation years under Treas. Reg. § 1.1502-21(c).

(aa) Corp X is not, and has not been at any time during the relevant testing period, a U.S. real property holding company within the meaning of section 897 of the Code.

(bb) Corp Y is not, and has not been at any time during the relevant testing period, a U.S. real property holding company within the meaning of section 897 of the Code.

(cc) Corp Z is not, and has not been at any time during the relevant testing period, a U.S. real property holding company within the meaning of section 897 of the Code.

RULINGS

Based solely on the information submitted and the representations made above, we rule as follows as to the Reincorporation:

(1) The Reincorporation constitutes a reorganization under section 368(a)(1)(F). Corp Y and Corp Z each is "a party to the reorganization" under section 368(b).

(2) Corp Y recognizes no gain or loss on the transfer of its assets to Corp Z in exchange for Corp Z stock and the assumption by Corp Z of Corp X's liabilities (§§ 357(a) and 361(a)).

(3) Corp Z recognizes no gain or loss on the receipt of Corp Y's assets in exchange for Corp Z stock and the assumption of Corp Y's liabilities (§ 1032(a)).

(4) Corp Z's basis in the assets received from Corp Y is the same as the basis of such assets in the hands of Corp Y immediately before the Reincorporation (§ 362(b)).

(5) Corp Z's holding period in the assets received from Corp Y includes the period during which such assets were held by Corp Y (§ 1223(2)).

(6) Corp Y recognizes no gain or loss on the distribution of the Corp Z stock to its shareholders (§ 361(c)).

(7) Corp Z succeeds to and takes into account the items of Corp Y as described in § 381(c).

(8) Shareholders of Corp Y recognize no gain or loss on the receipt of Corp Z stock in exchange for Corp Y stock (§ 354(a)(1)).

(9) Each shareholder's basis in Corp Z stock received is the same as the basis of the Corp Y stock surrendered in exchange (§ 358(a)(1), §1.358-2(a)).

(10) Each shareholder's holding period of Corp Z stock received includes the period during which the shareholder held the Corp Y stock surrendered in exchange, provided that the Corp Y stock was held as a capital asset on the date of the Reincorporation (§ 1223(1)).

Based solely on the information submitted and the representations made above, we rule as follows as to the Merger:

(11) Provided the Merger qualifies as a statutory merger in accordance with State B law, the Merger will constitute a reorganization under § 368(a)(1)(A). Corp X and Corp Z will each be "a party to a reorganization" within the meaning of § 368(b).

(12) Corp X will recognize no gain or loss on the transfer of its assets to Corp Z in exchange for Corp Z stock and the assumption by Corp Z of Corp X's liabilities (§§ 357(a) and 361(a)).

(13) Corp Z will recognize no gain or loss on the receipt of Corp X's assets in exchange for Corp Z stock and the assumption of Corp X's liabilities (§ 1032(a)).

(14) Corp Z's basis in the assets received from Corp X will be the same as the basis of such assets in the hands of Corp X immediately before the Merger (§ 362(b)).

(15) Corp Z's holding period in the assets received from Corp X will include the period during which such assets were held by Corp X (§ 1223(2)).

(16) Corp Z will succeed to and take into account the items of Corp X as described in § 381(c).

(17) Corp X will recognize no gain or loss on the distribution of the Corp Z stock to Parent (§ 361(c)).

(18) Parent will recognize no gain or loss on the receipt of Corp Z stock in exchange for Corp X stock (§ 354(a)(1)).

(19) Parent's basis in Corp Z stock received will be the same as the basis of the Corp X stock surrendered in exchange (§ 358(a)(1), §1.358-2(a)).

(20) Parent's holding period of Corp Z stock received will include the period during which Parent held the Corp X stock surrendered in exchange, provided that the Corp X stock was held as a capital asset on the date of the Merger (§ 1223(1)).

(21) The Corp Z shareholders that exchange Corp Z stock for cash and nonvoting stock in Parent will be treated as having a disposition under section 302.

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express no opinion as to which group (if either) continues after the Merger, or which group must close its taxable year on the date of the Merger, or which group succeeds to the tax attributes of the other under section 1502.

PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Lewis K. Brickates
Lewis K. Brickates
Chief, Branch 4
Office of Associate Chief Counsel
(Corporate)

cc: